



CALIFORNIA STATE PERSONNEL BOARD

GRAY DAVIS, Governor

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CALIFORNIA STATE PERSONNEL BOARD MEETING 801 Capitol Mall Sacramento, California

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES**

FEBRUARY 20, 2002

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. State Personnel Board staff met with representatives of state supervisor and managerial organizations to discuss the impact of the 2001 budget cuts on State Personnel Board programs, their concerns regarding decentralized testing and appeals, and potential survey legislation. The representatives will have an opportunity to meet with State Personnel Board staff conducting the decentralized testing review, and with State Personnel Board appeals staff to further discuss issues and possible solutions.

** The Summary Minutes for the Board can be obtained at the following Internet address:

<http://www.spb.ca.gov/spbmeet/spbminrd.cfm>

- B. Efforts by the State of Florida to contract out its human resources transactions processing and recruitment activities has been terminated because of a lack of legislative support.
- C. The California State Employees Association has requested State Personnel Board review of the janitorial contract at the Ziggurat Building.
- D. State Personnel Board and Department of Information Technology (DOIT) staff have met and selected an option for eliminating the backlog of candidates waiting to receive their scores from the internet based Information Technology Examinations. The delay results from departments providing less than their agreed upon amount of staff time to score the exams. DOIT and State Personnel Board will contact departmental Chief Information Officers and Personnel Offices, and arrange for raters to be scheduled to score candidates.
- E. John Birkenstock, who retired last year after working more than 35 years with the State Personnel Board, recently passed away.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Legal News

- A. McGinnis v. Department of Health Services - California Supreme Court has granted review of this decision which allows workers subjected to sexual harassment by supervisors to sue their employers, whether or not they had reason to know of the misconduct.

Litigation

- A. Jacobs v. State Personnel Board/Department of Justice - Case has been settled.
- B. International Union of Operating Engineers (IUOE) v. State of California et al. - Hearing held February 8, 2002 on IUOE's motion to confirm an arbitration award rendered pursuant to Unit 12 Memorandum of Understanding arbitration of discipline process that was declared unconstitutional by Judge Ohanesian. State Personnel Board successfully intervened in the

matter and participated with representatives of Department of Personnel Administration, IUOE and the State Controller's Office. Court took matter under consideration.

- C. Connerly v State Personnel Board - State respondents have signed a stipulation to share costs, but Connerly is objecting to that agreement insisting that real parties in interest pay a share, and has served all parties with notice to pay approximately \$3,000 in costs. Hearing on the petition for peremptory writ has been set for March 18, 2002.
- D. Borroel v. State Personnel Board - On February 14, 2002, the State Personnel Board defended an action in court brought by a Department of Personnel Administration attorney to stay the second day of a State Personnel Board hearing, pending a court decision on a request to dismiss charges brought pursuant to a Request to File Charges that had been granted by the Board. The Superior Court denied the stay on the grounds that the petitioner had not exhausted his administrative remedies before the State Personnel Board.

Other

- A. Council of Counsels will meet on March 7, 2002, at 1:00 p.m.
- B. The Labor and Employment Section of the Sacramento County Bar is putting on a seminar Saturday morning, March 16, 2002 from 8:30 a.m. to 12:30 p.m. on "Litigating the High-Profile Whistleblower/Sexual Harassment/Retaliation Action, Tips from the Experts." The hypothetical case to be discussed involves a public employee working for a mythical state agency and issues within the jurisdiction of State Personnel Board as well as other state agencies, and the courts will be discussed by a panel of experts.
- C. Labor and Employment Section of The San Francisco County Bar - State Personnel Board Member Sean Harrigan has been invited to speak on a February 22, 2002 seminar panel with Department of Personnel Administration Director Marty Mortgenstern concerning the overlap, and sometimes conflict between civil service and collective bargaining laws.

- D. Disability Task Force has been reconvened and is now chaired by another Public Employee Retirement System attorney. Karen Brandt of the State Personnel Board's legal staff sits on the task force. The topic under discussion is preparation of a pamphlet that will explain the roles of the different agencies in resolving medical issues that make it difficult or impossible for an employee to perform their job duties.

BOARD ACTIONS

4. STATE PERSONNEL BOARD SUMMARY MINUTES OF FEBRUARY 7-8, 2002

ACTION: Withdrawn; minutes will be re-submitted at next Board meeting.

5. ADMINISTRATIVE LAW JUDGE CASES

On February 20, 2002, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

PROPOSED DECISIONS

M. BRENT EDWARDS, CASE NO. 99-4422B
Appeal for determination of salary,
benefits and interest after reinstatement
Auto Equipment Operator I
Metropolitan State Hospital
Department of Mental Health
ACTION: Overtime backpay denied

NATHANIEL D. MATTHEWS, CASE NO. 01-2356
Appeal from suspension for 60 workdays
Correctional Officer
San Diego - Correctional Facility
Department of Corrections
ACTION: Administrative Law Judge's proposed decision
rejected by Board. Board to decide case itself.

JANE MOOTZ, CASE NO. 00-0455
Appeal from dismissal
Correctional Officer
Bella Vista - Conservation Camp
Department of Corrections
ACTION: Dismissal modified to a 60 days suspension

DEREK H. NEEDHAM, CASE NO. 01-3369
Appeal from five percent reduction
in salary for six months
Correctional Officer
Imperial - State Prison
Department of Corrections
ACTION: Five percent reduction in salary for six months
modified to an official reprimand

PATRICK OSBORNE, CASE NO. 01-1586
Appeal from ten percent reduction
in salary for five months
Transportation Surveyor
Department of Transportation
ACTION: Withdrawn by Administrative Law Judge

RICHARD SIFT, CASE NO. 01-3479
Appeal from five percent reduction
in salary for two months
Senior Telecommunications Engineer
Department of General Services
ACTION: Five percent reduction in salary for two months
modified to an official reprimand. Chief Council's office
to prepare a special resolution

DINAH M. WAINWRIGHT, CASE NO. 01-2940
Appeal from five percent reduction in
salary for six pay periods
Accounting Technician
Chino - Youth Correctional Facility
Department of the Youth Authority
ACTION: Five percent reduction in salary for six pay
periods sustained. Chief Counsel's office to prepare a
special resolution

SHERRIE ENGLISH, CASE NO. 01-1437
Appeal from dismissal
Correctional Officer
Lancaster - State Prison
Department of Corrections
ACTION: Dismissal sustained

NANCY CHAN, CASE NO. 01-3154
Appeal from automatic resignation
Office Assistant (Typing)
Employment Development Department
ACTION: Proposed decision rejected by Board and remanded to
an Administrative Law Judge.

PETITIONS FOR REHEARING

JAMES ROGERS, CASE NO. 01-3875
Appeal from rejection during probation
Mail Clerk I
Long Beach - California State University
California State University
ACTION: Petition for rehearing filed by appellant denied

SULEMAN MOOSA, CASE NO. 01-2172
Appeal from ten working days suspension
Professor
Chico - California State University
California State University
ACTION: Petition for rehearing filed by appellant denied

6. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 14-17.

7. WITHHOLD APPEALS

On February 20, 2002, the Board adopted the following
decisions presented by Walter Vaughn, Executive Officer,
California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

PATRICK BARBER, CASE NO. 01-1294
Classification: Parole Agent I, Adult Parole
Department of Corrections
ACTION: DENIED

MARIA BARLOW, CASE NO. 01-1562
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

BERNADINE BENAVIDEZ, CASE NO. 01-1386
Classification: Motor Vehicle
Field Representative
Department of Motor Vehicles
ACTION: DENIED

JOANN EALY, CASE NO. 01-1310
Classification: Associate Information
System Analyst
State Personnel Board
ACTION: DENIED

SOFIA HERNANDEZ, CASE NO. 01-1453
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

FERNANDO HERRERA, CASE NO. 01-1968
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

GARY KLEIN, CASE NO. 01-1998
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

TONY MESARIS, CASE NO. 01-2018
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

JOHNNY MOLER, CASE NO. 01-2016
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

JOSE QUINONEZ, CASE NO. 01-0878
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

ANGEL SOTO, CASE NO. 01-1410
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DANIEL VENOSTA, CASE NO. 01-0518
Classification: Cadet, California Highway Patrol
California Highway Patrol
ACTION: DENIED

8. MEDICAL APPEALS

On February 20, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

RUSSELL MILLER, CASE NO. 01-1240
Classification: Youth Correctional
Counselor
State Personnel Board
ACTION: DENIED

KEVIN MOORE, CASE NO. 01-2363
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

CHRISTOPHER MURPHY, CASE NO. 01-1472
Classification: State Park Ranger Cadet
State Personnel Board
ACTION: DENIED

MARCIA RAMBAUD, CASE NO. 00-3339
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

9. MINIMUM QUALIFICATIONS

On February 20, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

(Minimum Qualification Cases)
DEBORAH LEVON, CASE NO. 01-1854
Classification: Senior Information Systems
Analyst (Specialist)
Franchise Tax Board
ACTION: DISMISSED

DEBORAH LEVON, CASE NO. 01-1856
Classification: Senior Information Systems
Analyst (Supervisor)
Franchise Tax Board
ACTION: DISMISSED

10. MERIT ISSUE COMPLAINTS

On February 20, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

(Merit Issue Complaint Cases)

CAROL NISHIMOTO, CASE NO. 00-4246

Classification: Recycling Specialist I

Department of Conservation

ACTION: DENIED

JASON STERLING, CASE NO. 01-1456

Classification: Energy Analyst

California Energy Commission

ACTION: RESCINDED

11. REQUEST TO FILE CHARGES CASE

PETITIONS FOR REHEARING CASES

On February 20, 2002, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

(Request to File Charges Case)

RICHARD HASELTINE, CASE NO. 01-0872

Classification: An employee with the Department of Social Services

ACTION: DENIED

(Petitions for Rehearing Cases)

JOSE JASSO, JR., CASE NO. 00-3921P

Classification: Correctional Officer

Department of Corrections

ACTION: DENIED

TERESA TAYLOR, CASE NO. 00-3873P

Classification: Nurse Consultant III

Department of Health Services

ACTION: DENIED

12. NON-HEARING CALENDAR

On February 20, 2002, the Board adopted item "A." This item was presented by Karen Coffee, Chief, Personnel Resources and Innovations Division, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos - Aye.

- A. EMPLOYMENT PROGRAM REPRESENTATIVE
DISABILITY INSURANCE PROGRAM REPRESENTATIVE
The Employment Development Department proposes specification revisions to the classes of Employment Program Representative and Disability Insurance Program Representative to date language and reflect current job responsibilities; and revision of Alternate Range Criteria 181.

13. STAFF CALENDAR ITEMS FOR BOARD INFORMATION

Staff has approved the following:

- A. PROGRAM SPECIALIST III, FRANCHISE TAX BOARD
The Franchise Tax Board proposes to amend the Program Specialist III, Franchise Tax Board specification revision adopted by the State Personnel Board on December 4, 2001, as set forth in item 14A of the Summary Minutes.
- B. SUPERVISING BRIDGE ENGINEER
The Department of Transportation proposes to revise the specification for the Supervising Bridge Engineer classification to delete the requirement that the one-year of experience in Pattern II of the minimum qualifications be supervisory.

ACTION: Noted

14. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

- A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION
 - (1) DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE, FIELD OPERATIONS
The California Unemployment Insurance Appeals Board proposes to allocate the above position to the CEA category. The Deputy Chief is responsible for the administration of all activities in the Field Operations Branch; and provides executive level leadership and support to the Chief Administrative Law Judge (ALJ) and the Board including all aspects of the planning and organizing necessary for the Board to carry out the legislative mandate of the Unemployment Insurance Code. The department indicates that the

position is at the second organizational level and will report to the Chief ALJ/Executive Director.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO
ESTABLISH NEW CEA POSITIONS

- (1) PROGRAM MANAGER, CALIFORNIA FUEL CELL PARTNERSHIP
The Air Resources Board's request to allocate the above position to the CEA category has been approved effective January 29, 2002.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. SUSAN BERGER-TULLY, CASE NO. 01-0489P. Appeal from rejection during probation. (Oral argument held November 6, 2001).

NO ACTION

2. SVETOZAR STUKOVSKY, CASE NO. 99-3583. Appeal from dismissal. Department of Corrections. (Oral argument held January 8, 2002).

NO ACTION

3. State Personnel Board proposes regulations to clarify and codify the process for filing, processing, hearing, and deciding complaints of Whistleblower Retaliation in State Service. (Hearing held February 7, 2002).

NO ACTION

4. State Personnel Board proposes regulations to clarify the Discovery Process that will apply to evidentiary hearings concerning specified complaints or appeals, in some cases also involving alleged discrimination or retaliation. (Hearing held February 7, 2002).

NO ACTION

5. STEPHEN J. SURTSHIN, CASE NO. 00-1724P AND 00-3176P. Appeal from two-step reduction in salary for six months. Department of Mental Health. (Written argument presented February 7, 2002).

NO ACTION

6. VICTOR FINK, CASE NO. 00-2363. Appeal from medical termination, demotion and transfer. California Highway Patrol. (Oral Argument held February 8, 2002).

NO ACTION

7. MICHAEL MACKENZIE, CASE NO. 00-1817. Appeal from demotion. California Department of Corrections. (Oral Argument held February 8, 2002).

NO ACTION

8. HEARING - PSC 01-08: Appeal of the California Science Center (CSC) from the Executive Officer's August 23, 2001 disapproval of a contract between CSC and Swayzer's Inc., for grounds maintenance services at Exposition Park Los Angeles, in response to the request for review submitted by the International Union of Operating Engineers. (Hearing held February 8, 2002).

NO ACTION

9. EVELYN YOUNG, CASE NO. 00-3017. Classification: Supervising Governmental Auditor I, Department of Aging. Department of Aging. (Presented to Board February 8, 2002).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and


WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on February 20, 2002.



WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos - Aye.

CORRECTION

The following action should have been shown in the Summary Minutes of February 7-8, 2002.

1. PSC 01-06: Appeal of the California Department of Transportation from the Executive Officer's August 15, 2002 disapproval of a contract between Caltrans and Charles Seifert & Associates pursuant to the request of the California State Employees Association. (Hearing held February 8, 2002).

ACTION: A resolution was adopted on February 8, 2002, referring the matter for an evidentiary hearing.

VOTE: Elkins, Bos, Harrigan - Aye